

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:

Ronald Elliot Gray and
Leslie Dalehite Gray,

Bankruptcy Case No.: 06-80048

Soc. Sec. Nos. xxx-xx-7163 & xxx-xx-3932

Mailing Address: Post Office Box 63, ,
Hillsborough, NC 27278-

Debtors.

Ronald Elliot Gray and
Leslie Dalehite Gray,

A.P. No.: _____

Plaintiffs,

Suntrust Bank/CCB,

Defendant.

COMPLAINT TO VALUE COLLATERAL

The Plaintiffs, above-named, respectfully allege as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. Section 157, and that the court has jurisdiction pursuant to 28 U.S.A. Sections 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. 506, and in accordance with Bankruptcy Rule 7001, to value their residence for the purpose of determining the secured status of the mortgage claim held by Suntrust Bank/CCB.
3. The Plaintiffs are filed this bankruptcy case on January 12, 2006 seeking protection under Chapter 13 of Title 11 of the United States Code.
4. The Defendant Suntrust Bank/CCB is a corporation and/or a partnership with an office and principal place of business located at Attn: Support Services, Post Office Box 85092, Richmond, VA 23286 and/or Post Office Box 30063 Oc 33, Durham, NC 27702 .This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. Section 157 and 1334 and 11 U.S.C. Section 506.
5. The Plaintiffs own real property located at 1507 US 70 A East, Hillsborough, NC 27278. The legal description of the property is as follows:

ALL THOSE CERTAIN LOTS OR PARCELS OF LAND, TOGETHER WITH THE IMPROVEMENTS THEREON, SITUATED, LYING ON THE SOUTH SIDE OF U.S. HIGHWAY NO. 70-A AND ABOUT TWO MILES SOUTHEAST OF THE TOWN OF HILLSBOROUGH, NORTH CAROLINA, AND WHICH SAID PROPERTY IS MORE PARTICULARLY DESCRIBED AS BEGINNING AT A STAKE IN THE SOUTH PROPERTY LINE OF THE SAID HIGHWAY AND WHICH POINT IS ESTABLISHED BY MEASURING NORTH 70 DEG. WEST 495 FEET FROM THE SOUTHWESTERN IN INTERSECTION OF THE SAID HIGHWAY AND LAWRENCE ROAD; RUNNING THENCE ALONG THE SOUTH PROPERTY LINE OF SAID HIGHWAY NORTH 70 DEG. WEST 200 FEET TO A STAKE, A CORNER OF THE OTHER PROPERTY OF DAVID H. BAIRD, RUNNING THENCE WITH THE LINE OF THAT PROPERTY SOUTH

20 DEG. WEST 400 FEET TO A STAKE ; RUNNING THENCE NORTH 20 DEG. EAST 400 FEET TO THE BEGINNING AND BEING LOTS NOS. 49, 50, 51, 52, 53, 54, AND 55 AND A PART OF LOTS NOS. 48 AND 56 IN BLOCK "D" OF THE BANHEAD FORREST SUBDIVISION AND WHICH SAID PROPERTY WAS RESURVEYED AND PLOTTED BY ROBERT A. JONES ON MAY 28, 1969.

Being that parcel of land conveyed to DONALD E. GRAN AND HIS WIFE, LESLIE D. GRAY TENANTS BY THE ENTIRETY from JOAN ASHMON KLEMIC AND HER HUSBAND JAMES KLEMIC by that deed dated 06/15/2001 and recorded 06/20/2001 deed book 2289, at page 226 of the ORANGE County, NC Public Registry.

The tax map or parcel ID No. is: 9874908607

6. Wells Fargo Bank holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$106,565.00. This Deed of Trust was recorded on 6/20/02 in Book 2289 at Page 228, Orange County Registry of Deeds.
7. Suntrust Bank/CCB holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$30,048.00. This Deed of Trust was recorded on 10/28/02 in Book 2762 at Page 496, Orange County Registry of Deeds.
8. The fair market value of the said property is not greater than \$97,424.00.
9. Pursuant to 11 U.S.C. 506 of the Bankruptcy Code and In re: Kidd, 161 B.R. 769 (Bankr. E.D.N.C. 1993), the loan with Suntrust Bank/CCB, secured by a second Deed of Trust against the Plaintiffs' said property, is an unsecured claim. In turn, pursuant to 11 U.S.C. 506(d), the lien securing said loan is void.
10. The attorney for the Plaintiffs further requests that he be allowed the presumptive non-base fee for obtaining a loan modification on behalf of the Plaintiffs in the amount of \$350.00, to be paid through the Plaintiffs' Chapter 13 plan as an administrative priority claim.

WHEREFORE, the Plaintiffs pray the Court find that said claim held by Suntrust Bank/CCB, which is secured by a second Deed of Trust upon said property, to be wholly unsecured, and that said claim should therefore be classified an unsecured claim for the purpose of this Chapter 13 case. The Plaintiffs further pray that the Court order Suntrust Bank/CCB to cancel the said Deed of Trust forthwith upon the completion of the Plaintiffs' Chapter 13 plan and the granting of the Plaintiffs' discharge, that the attorney for the Plaintiffs be awarded \$350.00 to be paid through the Plaintiffs' plan as an administrative priority claim, and that the Court grant such other and further relief as to the Court seems just and proper.

Dated: August 4, 2009

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz

Edward Boltz

Attorney for the Plaintiffs

North Carolina State Bar No.: 23003

6616-203 Six Forks Road

Raleigh, N.C. 27615

(919) 847-9750